

Schwegman ■ Lundberg ■ Woessner ■ Kluth

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY



As a below named inventor I hereby declare that: "my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: **BRYOSTATINS, BRYOPYRANS AND POLYKETIDES: COMPOSITIONS AND METHODS**.

The specification of which was filed on <u>January 31, 2001</u> as application serial no. <u>09/775,938</u> and was amended on <u>January 31, 2001</u>.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). It also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. §1.63(e).

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No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

Application Number 60/147,283

Filing Date
August 4, 1999

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Application Number PCT/US00/21326

Filing Date
August 4, 2000

Status Pending

Serial No. 09/775,938 Filing Date: January 31, 2001

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael	Reg. No. 24,916	Hill, Stanley K.	Reg. No. 37,548	Nielsen, Walter W.	Reg. No. 25,539
Arora, Suneel	Reg. No. 42,267	Huebsch, Joseph C.	Reg. No. 42,673	Oh, Allen J.	Reg. No. 42,047
Beekman, Marvin L.	Reg. No. 38,377	Jurkovich, Patti J.	Reg. No. 44,813	Padys, Danny J.	Reg. No. 35,635
Bianchi, Timothy E.	Reg. No. 39,610	Kalis, Janal M.	Reg. No. 37,650	Parker, J. Kevin	Reg. No. 33,024
	-	Kaufmann, John D.	Reg. No. 24,017	Perdok, Monique M.	Reg. No. 42,989
Billion, Richard E.	Reg. No. 32,836			•	
Black, David W.	Reg. No. 42,331	Klima-Silberg, Catherine I.	Reg. No. 40,052	Peterson; David C.	Reg. No. P-47,857
Brennan, Leoniede M.	Reg. No. 35,832	Kluth, Daniel J.	Reg. No. 32,146	Prout, William F.	Reg. No. 33,995
Brennan, Thomas F.	Reg. No. 35,075	Lacy, Rodney L.	Reg. No. 41,136	Schumm, Sherry W.	Reg. No. 39,422
Brooks, Edward J., III	Reg. No. 40,925	Lemaire, Charles A.	Reg. No. 36,198	Schwegman, Micheal L.	Reg. No. 25,816
Clark, Barbara J.	Reg. No. 38,107	LeMoine, Dana B.	Reg. No. 40,062	Scott, John C.	Reg. No: 38,613
Clise, Timothy B.	Reg. No. 40,957.	Lundberg, Steven W.	Reg. No. 30,568	Smith, Michael G.	Reg. No. 45,368
Dahl, John M.	Reg. No. 44,639	Maeyaert, Paul L.	Reg. No. 40,076	Speier, Gary J.	Reg. No. 45,458
Drake, Eduardo E.	Reg. No. 40,594	Maki, Peter C.	Reg. No. 42,832	Steffey, Charles E.	Reg. No. 25,179
Embretson, Janet E.	Reg. No. 39,665	Malen, Peter L.	Reg. No. 44,894	Stordal, Leif T.	Reg. No. 46,251
Fordenbacher, Paul J.	Reg. No. 42,546	Mates, Robert E.	Reg. No. 35,271	Terry, Kathleen R.	Reg. No. 31,884
Forrest, Bradley A.	Reg. No. 30,837	McCrackin, Ann M.	Reg. No. 42,858	Tong, Viet V.	Reg. No. 45,416
Gamon, Owen J.	Reg. No. 36,143	Moore, Charles L., Jr.	Reg. No. 33,742	Viksnins, Ann S.	Reg. No. 37,748
Gortych, Joseph E.	Reg. No. 41,791	Nama, Kash	Reg. No. 44,255	Vogel, Peter J.	Reg. No. 41,363
Harris, Robert J.	Reg. No. 37,346	Nelson, Albin J.	Reg: No. 28,650	Woessner, Warren D.	Reg. No. 30,440

Thereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:
P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so, made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

•	e or imprisonment, or both, under Section 10 the validity of the application or any patent		and that such willful false.
Full Name of joint inventor	number 1 : Margo Haygood		
Citizenship:	United States of America	Residence: La Jolla, CA	•
Post Office Address:	2390 King Arthur Court		
	La Jolla, CA 92037		• .
Signature:	Margo Haygood /	Date: 3/17/01	
Full Name of joint inventor	number 2: Seana K. Davidson		_
Citizenship:	United States of America	Residence: La Jolla, CA	
Post Office Address:	9168H Regents Road		
-	La Jolla, CA 92037	•	
Signature:		Date:	
•	Seana K. Davidson		

X Additional inventors are being named on separately numbered sheets, attached hereto.

Attorney Docket No.: 1133.010US1 Serial No. 09/775,938 Filing Date: January 31, 2001

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Full Name of joint invent Citizenship: Post Office Address:	United States of America 5111 La Jolla Blvd. #7 San Diego, CA 92109	Residence: San Die	ego, CA		٠
Signature:	Scott W. Allen	Date:	<u> </u>		
	Scott w. Allen	:		, 	
Full Name of joint invent Citizenship: Post Office Address:	or number 4: Mark Hildebrand United States of America 8640 Via Mallorca Apt. E La Jolla, CA 92037	Residence: La Jolla	a, CA 3-9-01		
Signature:	Mark Hildebrand	Date:		-	
Full Name of inventor: Citizenship: Post Office Address:		Residence:			
Signature:		Date:		· .	
				_	
Full Name of inventor: Citizenship: Post Office Address:		Residence:		·	
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§ 1.56 Duty to disclose information material to patentability.

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
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 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b). Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
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 - (ii) Asserting an argument of patentability.

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- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application:
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



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Status Pending Attorney Docket No.: 1133.010US1 Serial No. 09/775,938 Filing Date: January 31, 2001

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statements may Jeopardize	the validity of the application of any paten	i Issued silvivo	
Full Name of joint inventor Citizenship: Post Office Address:	number 1: Margo Haygood United States of America 2390 King Arthur Court La Jolla, CA 92037	Residence: La Jolla, CA	
Signature:	M Harrand	Date:	
	Margo Haygood		
Full Name of joint inventor Citizenship: Post Office Address:	r number 2: <u>Seana K. Davidson</u> United States of America 9168H Regents Road La Jolla, CA 92037	Residence: La Jolla, CA	·
Signature:	ma K. Twide	Date:3/12/01	

 \underline{X} Additional inventors are being named on separately numbered sheets, attached hereto.

Seana K. Davidson

Serial No. 09/775,938 Filing Date: January 31, 2001

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Signature:	Scott W. Allen	Date:	
Full Name of joint inven Citizenship: Post Office Address:	tor number 4: Mark Hildebrand United States of America 8640 Via Mallorca Apt. E La Jolla, CA 92037	Residence: La Jolla, CA	
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			·
Full Name of inventor: Citizenship: Post Office Address:		Residence:	
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Attorney	Docket No.: 11	133.010US1
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Full Name of joint inventor Citizenship: Post Office Address:	number 1: Margo Haygood United States of America 2390 King Arthur Court La Jolla, CA 92037	Residence: La Jolla, CA	
Signature:		Date:	
	Margo Haygood		
Full Name of joint inventor Citizenship: Post Office Address:	number 2: <u>Seana K. Davidson</u> United States of America 9168H Regents Road La Jolla, CA 92037	Residence: La Jolla, CA	-
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Signature:		Date:		
	Mark Hildebrand			
			•	
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Serial No. 09/775,938 Filing Date: January 31, 2001

§ 1.56 Duty to disclose information material to patentability.

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application:
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.